

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL
FILED

JAN - 9 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

TRANS-PACIFIC AVIATION SERVICES,
INC, a California Corporation;

Plaintiff,

vs.

PRIMARIS AIRLINES, INC, a Nevada
Corporation, and DOES 1 through 100,
inclusive.

Defendant.

Case No.

008-00139

JCS

NOTICE OF REMOVAL OF CIVIL
ACTION

ADR

Pursuant to 28 U.S.C. §§ 1441, *et seq.*, Defendant, PRIMARIS AIRLINES, INC., a Nevada corporation (hereinafter "Primaris"), hereby serves notice of this removal of action from the Alameda County Superior Court to the United States District Court for the Northern District of California. Primaris respectfully sets forth the grounds for removal to the Court as follows:

I.

JURISDICTIONAL GROUNDS FOR REMOVAL

1. Removal of this case pursuant to 28 U.S.C. §§ 1441 is proper as it falls within the Court's diversity jurisdiction. Specifically, this Court has original jurisdiction when the parties are of diverse citizenship and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00 18 U.S.C. § 1332(a).

II.

PURSUANT TO 28 U.S.C. § 1446(b), REMOVAL IS TIMELY

2. On November 6, 2007, Plaintiff filed a Complaint for damages in the Alameda County Superior Court, Northern Division (the "State Court Action"). A true and correct copy of Plaintiff's Complaint in the State Court Action, captioned *Trans-Pacific Aviation Services, Inc*

1 v. *Primaris Airlines, Inc.*, and Does 1 through 100, inclusive, Case Number: RG 07355043, is
2 attached hereto as Exhibit 1.

3 3. Plaintiff first served the Complaint on Defendants on December 10, 2007. A true
4 and correct copy of Plaintiff's Proof of Service of Summons is attached hereto as Exhibit 2.
5 Pursuant to 28 U.S.C. § 1446(b), this notice for removal is filed timely within thirty (30) days of
6 service upon Defendant of Plaintiff's Summons and Complaint.

7 4. The Complaint and Proof of Service attached as Exhibits 1 and 2 are the only
8 papers served in this proceeding to date.

9 **III.**

10 **PURSUANT TO 28 U.S.C. § 1332, REMOVAL IS PROPER ON THE**
11 **GROUND OF DIVERSITY JURISDICTION**

12 **A. The Parties are of Diverse Citizenship**

13 5. Section 1332 requires complete diversity of citizenship in that each plaintiff must
14 be a citizen of a different state than each defendant. *Morris v. Princess Cruises, Inc.* 236 F.3d
15 1061, 1067 (9th Cir.2001).

16 6. Plaintiff Trans-Pacific Aviation Services, Inc. is a California corporation with its
17 principal place of business in Alameda County, California.

18 7. Defendant Primaris Airlines, Inc., is a Nevada corporation with its principal place
19 of business in Clark County, Nevada.

20 8. The parties in this case are in complete diversity of citizenship.

21 **B. The Amount in Controversy exceeds \$75,000.00**

22 9. A court must first consider whether it is "facially apparent" from the complaint
23 that the jurisdictional amount in controversy requirement is met. *Singer v. State Farm Mut.*
24 *Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997).

25 10. The Plaintiff alleges damages in excess of \$576,115.13, plus interest at a rate of
26 10 percent.

27

28

IV.

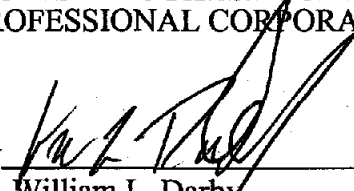
CONCLUSION

Defendant Primaris has presented facts to show that this civil action is between diverse parties with an amount in controversy exceeding \$75,000.00, and therefore the action meets the criteria of 28 U.S.C. § 1332. As a result, removal is proper under 28 U.S.C. § 1441 and § 1446(b). Based upon the grounds set forth herein-above, this matter is subject to removal and should proceed before this Court.

Respectfully submitted this on this 9th day of January, 2008.

WULFSBERG REESE COLVIG & FIRSTMAN
PROFESSIONAL CORPORATION

By


William L. Darby
CA. Bar No. 138325
Attorney for Defendant
PRIMARIS AIRLINES, INC.

LAW OFFICES
WULFSBERG REESE COLVIG & FIRSTMAN
PROFESSIONAL CORPORATION
KAISER CENTER
300 LAKESIDE DRIVE, 24TH FLOOR
OAKLAND, CALIFORNIA 94612-3524
TELEPHONE (510) 835-9100

PLD-C-01	
FOR COURT USE ONLY	
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Matthew J. Webb, Esq., SBN 148228 LAW OFFICES OF MATTHEW J. WEBB 409 13th Street, 17th Floor Oakland, CA 94612 TELEPHONE NO: (510) 444-4224 FAX NO. (Optional): E-MAIL ADDRESS (Optional):	
ATTORNEY FOR (Name): Plaintiff Trans-Pacific Aviation Services, Inc. SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Northern Division	
PLAINTIFF: Trans-Pacific Aviation Services, Inc. DEFENDANT: Primaris Airlines, Inc., and Does 1 through 100, inclusive <input type="checkbox"/> DOES 1 TO	
CONTRACT <input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT (Number): <input type="checkbox"/> CROSS-COMPLAINT <input type="checkbox"/> AMENDED CROSS-COMPLAINT (Number):	
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	
CASE NUMBER: RG 07355043	

1. Plaintiff* (name or names): Trans-Pacific Aviation Services, Inc.

alleges causes of action against defendant* (name or names): Primaris Airlines, Inc.

2. This pleading, including attachments and exhibits, consists of the following number of pages:

3. a. Each plaintiff named above is a competent adult

☒ except plaintiff (name): Trans-Pacific Aviation Services, Inc.

(1) ☒ a corporation qualified to do business in California

(2) ☐ an unincorporated entity (describe):

(3) ☐ other (specify):

b. Plaintiff (name):

a. ☐ has complied with the fictitious business name laws and is doing business under the fictitious name (specify):

b. ☐ has complied with all licensing requirements as a licensed (specify):

c. ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4. a. Each defendant named above is a natural person

☒ except defendant (name): Primaris Airlines, Inc.

(1) ☐ a business organization, form unknown

(2) X a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

☐ except defendant (name):

(1) ☐ a business organization, form unknown

(2) ☐ a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

SHORT TITLE: Trans-Pacific Aviation Services, Inc. v.
Primaris Airlines, Inc.

CASE NUMBER:

First

(number)

CAUSE OF ACTION—Breach of Contract

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): Trans-Pacific Aviation Services, Inc.

alleges that on or about (date): October 27, 2006

a ☒ written ☐ oral ☐ other (specify):

agreement was made between (name parties to agreement): Trans-Pacific Aviation Services, Inc. and Primaris Airlines, Inc.

☒ A copy of the agreement is attached as Exhibit A, or

☐ The essential terms of the agreement ☐ are stated in Attachment BC-1 ☐ are as follows (specify):

BC-2. On or about (dates): June 5, 2007

defendant breached the agreement by ☐ the acts specified in Attachment BC-2 ☒ the following acts (specify): Plaintiff had an exclusive services agreement to maintain defendant's aircraft at Oakland Airport and JFK Airport in New York. Payment is due within two weeks of invoice presentation. Since June 2007, defendant has failed to pay as promised, despite demands made upon them. On or about October 16, 2007, defendant terminated the contract. Pursuant to the agreement, defendant was obligated to reimburse plaintiff for its start up costs in the event of termination within two years.

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement

☐ as stated in Attachment BC-4 ☒ as follows (specify): Unpaid balance, including reimbursement for start up costs, in the amount of \$576,115.13, plus interest at the rate of 10 percent

BC-5. ☐ Plaintiff is entitled to attorney fees by an agreement or a statute

☐ of \$

☐ according to proof.

BC-6. ☐ Other:

Page

3 of 4
Page 1 of 1

SHORT TITLE: Trans-Pacific Aviation Services, Inc. v.
Primaris Airlines, Inc.

CASE NUMBER:

Second

(number)

CAUSE OF ACTION—Common Counts

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

CC-1. Plaintiff (name): Trans-Pacific Aviation Services, Inc.

alleges that defendant (name): Primaris Airlines, Inc.

became indebted to ☒ plaintiff ☐ other (name):a. ☒ within the last four years(1) ☒ on an open book account for money due.(2) ☐ because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff.b. ☒ within the last ☐ two years ☒ four years(1) ☐ for money had and received by defendant for the use and benefit of plaintiff.(2) ☒ for work, labor, services and materials rendered at the special instance and request of defendant and for which defendant promised to pay plaintiff☒ the sum of \$☐ the reasonable value.(3) ☐ for goods, wares, and merchandise sold and delivered to defendant and for which defendant promised to pay plaintiff☐ the sum of \$☐ the reasonable value.(4) ☐ for money lent by plaintiff to defendant at defendant's request.(5) ☒ for money paid, laid out, and expended to or for defendant at defendant's special instance and request.(6) ☐ other (specify):

CC-2. \$ 576,115.13

, which is the reasonable value, is due and unpaid despite plaintiff's demand, plus prejudgment interest ☒ according to proof ☐ at the rate of _____ percent per year from (date):CC-3. ☐ Plaintiff is entitled to attorney fees by an agreement or a statute☐ of \$☐ according to proof.CC-4. ☐ Other:Page 4 of 21
Page 1 of 1

Service of Process Transmittal Form



Date: December 11, 2007 **American Incorporators LTD**

Via:

1220 N. Market Street, Suite 808
Wilmington, DE 19801
(302) 421 5752
(800) 421 2661
(302) 421 5753 [fax]
info@ailecorp.com [email]
www.ailecorp.com

To: Mr. Kevin Lum
Primaris Airlines, Inc.
15300 N. 90th St.
Ste. 400
Scottsdale, AZ 85260

RE: PROCESS SERVED

For: Primaris Airlines Inc.

Domestic State: NV

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

1. **TITLE OF ACTION:** Trans-Pacific Aviation Services, Inc. vs. Primaris Airlines, Inc.
2. **DOCUMENTS SERVED:** Summons
3. **COURT:** Alameda County Superior Court
4. **NATURE OF ACTION:** RG 07355043
5. **ON WHOM PROCESS WAS SERVED:** American Incorporators, Ltd.
6. **DATE AND HOUR OF SERVICE:** December 10, 2007
7. **APPEARANCE OR ANSWER DUE:** You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written answer.
8. **ATTORNEY(S):** Matthew J. Webb, Esq.
9. **REMARKS:**

SIGNED: American Incorporators, Ltd.
PER: Michelle Holden
ADDRESS: 1220 N. Market Street
Suite 808
Wilmington, DE 19801
SOP

Information contained on this transmittal form is recorded for Registered Agents, Ltd. record keeping purposes only and to permit quick reference for the recipient. This information does constitute a legal opinion as to the nature of the action, amount of damages, the answer date, or any

Report032.doc

SUMMONS

(CITACION JUDICIAL)

AD 12/10/07 10:14 AM SUM-100

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

Primaris Airlines, Inc., and Does 1 through 100, inclusive

 FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED

FILED

ALAMEDA COUNTY

NOV 06 2007

 CLERK OF THE COURT
By [Signature] Deputy

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Trans-Pacific Aviation Services, Inc.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Alameda County Superior Court
1225 Fallon Street

 CASE NUMBER: PG 07355043
(Número del Caso)

Oakland, CA 94612

Northern Division

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Matthew J. Webb, Esq., SBN 148228

(510) 444-4224

LAW OFFICES OF MATTHEW J. WEBB

Oakland, CA 94612

DATE:

(Fecha) NOV 06 2007

Pat S. Sweeten

Clerk by

Pat S. Sweeten

Deputy

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): Primaris Airlines, Inc.

- under:
- | | |
|--|---|
| <input checked="" type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |

4. ☐ by personal delivery on (date):

PROOF OF SERVICE

Trans-Pacific Aviation Services, Inc. v. Primaris Airlines, Inc., et al.
United States District Court, Northern District of California Case No. _____

I certify and declare as follows:

I am over the age of 18 and not a party to this action. My business address is Wulfsberg Reese Colvig & Firstman Professional Corporation, 300 Lakeside Drive, 24th Floor, Oakland, California 94612, located in the County of Alameda, California where the below described mailing took place.

On January 9, 2008, at my place of business, I served the attached document(s) entitled:


NOTICE OF REMOVAL OF CIVIL ACTION

on the below-listed party(s) in this action, by providing a true copy of each said document(s) to the following person(s) in the following manner (see attached Service List):

- ☒ (By U.S. Mail) I caused said document(s) to be sealed into an envelope with appropriate postage affixed, and mailed in Oakland, CA, addressed as set forth below on the date set forth.
- ☐ (By Facsimile Transmission) I caused the original of each document to be transmitted to each addressee at the FAX number indicated.
- ☐ (By Electronic Mail) I caused a copy of each document to be transmitted by electronic mail to each addressee at the e-mail address indicated.
- ☐ (By Overnight Delivery) I caused a copy of each document to be delivered via Federal Express and marked for delivery on the next business day.

Matthew J. Webb, Esq.
Law Offices of Matthew J. Webb
Tribute Tower, 17th Floor
409 13th Street
Oakland, CA 94612

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true. Executed at Oakland, California on January 9, 2008.


Sylvia A. Gordon